

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
	:	15 Cr. 174-05 (LGS)
-against-	:	
	:	<u>ORDER</u>
CARLOS JOSE ZAVALA VELASQUEZ,	:	
Defendant,	:	
-----X	:	

LORNA G. SCHOFIELD, District Judge:

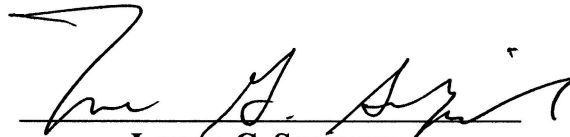
WHEREAS, on April 2, 2020, Defendant mailed to the Court a letter request for an extension of time to file a motion to vacate under 28 U.S.C. § 2255. The letter was filed on the docket on April 10, 2020 (Dkt. No. 435). It is hereby

ORDERED that Defendant’s request for an extension is **DENIED**. Unfortunately, the Court has no authority to grant the requested extension. “[A] district court may grant an extension of time to file a motion pursuant to section 2255 only if (1) the moving party requests the extension upon or after filing an actual section 2255 motion, and (2) ‘rare and exceptional’ circumstances warrant equitably tolling the limitations period.” *Green v. United States*, 260 F.3d 78, 82–83 (2d Cir. 2001). Neither of these conditions are satisfied here. Also, “a federal court lacks jurisdiction to consider the timeliness of a § 2255 petition until a petition is actually filed.” *Id.* at 82; *accord United States v. Rudge*, No. 16 Cr. 311, 2019 WL 4867828, at *2 (S.D.N.Y. Sept. 18, 2019) (denying request for extension to file a 2255 petition and observing that, “[w]here a movant has not yet filed a section 2255 petition, there is no underlying case or controversy and an opinion regarding timeliness would be merely advisory.”). Defendant has not yet filed his petition.

The Court may not construe Defendant's letter request as a substantive motion for relief (i.e., the petition), because the Court may only do so where "the filing specif[ies] all the grounds for relief which are available to the movant and of which he has or, by the exercise of reasonable diligence, should have knowledge and shall set forth in summary form the facts supporting each of the grounds thus specified." *Green*, 260 F.3d at 83; *accord Rone v. United States*, No. 12 Cr. 480-3, 2015 WL 12999721, at *2 (S.D.N.Y. Mar. 11, 2015) ("The Court cannot act on Rone's submission because he asserts no substantive *habeas* grounds. Even considered liberally, Rone's letter does not refer to any basis in law or fact which would entitle him to relief under § 2255."). Here, Defendant's letter does not provide facts supporting the legal grounds specified. It is further

ORDERED that the Government shall serve this Order on Defendant, and file proof of service, by **April 17, 2020**.

Dated: April 14, 2020
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

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February 4, 2020

For Professional Services

Re: United States District Court vs Ludwig Criss Zelaya Romero
Indictment#: S1 15 Cr. 174 (LGS)

Date	Procedure	Hours
11-12-19	Consultation with Court Clerk	0.30
11-18-19	Review of legal records	0.50
12-03-19	Review of Neuropsychological Assessment	0.50
12-16-19	Psychological Examination at Metropolitan Detention Center	6.00
12-16-19	Travel to MDC from Bklyn Hts Office	0.80
12-18-19	Intellectual functioning and Trauma assessment	3.00
12-18-19	Travel to MDC from Bklyn Hts Office	0.80
01-15-20	Psychological Examination at MDC	3.00
01-15-20	Travel to MDC from Bklyn Hts Office	0.80
01-17-20	Data Entry, Scoring and Interpretation of psychological tests	3.10
01-20-20	Forensic Psychological Report	7.20
01-23-20	Forensic Psychological Report	3.20
01-30-20	Forensic Psychological Report	2.90

Total = 32.1 hrs. at \$250.00/hr. = \$ 8,025.00

Please remit: \$ 8,025.00 at the above address.

Liliana Rusansky Drob
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